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**RE: CPSC Solicits Comments on Testing Requirements for Child Products:
Will Component Testing Be Acceptable in Mandatory Tests?**

The Consumer Product Safety Commission has issued a request for public comment on the mandatory third party testing requirements for children's products under the Consumer Product Safety Improvement Act (CPSIA). The first of these, mandatory testing for lead paint, becomes effective for products manufactured beginning next week.

This solicitation of comments is on an issue of immense importance to manufacturers and importers whose products comply with requirements but who will be subject to extraordinary ongoing testing costs for the testing of individual products under the current CPSC interpretation of the CPSIA mandatory testing language law. Only third parties will be acceptable for the mandatory product testing; what those parties test, and how often you will have to pay them for this going forward, are squarely on the line. Therefore, it will be important that manufacturers and importers present data as part of a significant response, including documentation of test results supporting exemption for materials, such as textile fabrics, and supporting component and supplier testing. The change from component testing to finished production testing is a primary driver for ongoing additional testing costs. Protection advocates, including many state attorney general offices, will undoubtedly be opposing any changes limiting the testing of every individual children's product.

The staff is soliciting comments and information regarding:

1. How the risk of non-compliant product would be affected if the agency permitted the testing of component parts rather than the finished consumer products.
2. The conditions and circumstances, if any, that should be considered in allowing third party testing of component parts.
3. The conditions, if any, under which supplier third party testing of raw materials or components should be acceptable.
4. Assuming all component parts are compliant, what manufacturing processes and/or environmental conditions might introduce factors that would increase the risk of allowing non-compliant consumer products into the marketplace. *[Note: At one public meeting, the CPSC general Counsel observed that lead in the factory environment affected the children's toys that created this situation.]*
5. Whether and how the use and control of subcontractors would be affected by allowing the third-party testing of component parts.

6. What changes in inventory control methods, if any, should be required if third party testing of component parts were permitted, including receipt, storage and quality control of incoming materials , management and control of work-in process, non-conforming material control, inventory rotation procedures, and overall identification and control of materials. *[Note: The CPSC may be seeking to impose inventory control requirements on importers as part of a best practices program, similar in concept to CBP's CTPAT program and labor law initiatives, for companies seeking to avoid the more extensive testing regime.]*
7. Processes for managing lot-to-lot variations of component parts, in a third party testing of component parts regime, to ensure finished consumer products are compliant. *[Note: Producing examples of actual documentation showing little variance over time between component results and finished product test results appears to be an important consideration.]*
8. Whether consideration of third party testing of component parts should be given for any particular industry groups or particular component parts and materials. Explain what it is about these industries, component parts and/or materials that make them uniquely suited to this approach. *[Note: Apparel and accessory products companies in particular should have extensive testing databases to present to the Commission.]*

Comments are due no later than January 30, 2009, and should be captioned "Section 102 Mandatory Third-Party testing of Component Parts". Comments may be filed by e-mail to Sec102ComponentPartsTesting@cpsc.gov , by facsimile to (301) 5040127 or by mail or delivery to the Office of the Secretary Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, MD 20814. After reviewing the comments, the Commission will publish a notice of proposed rulemaking, inviting additional comments. **However, if the proposed rules do not take into account industry documentation establishing component testing to be acceptable, you should not assume this can be corrected during the comment period because the comments will be on the CPSC proposed rule only. Now is the time to present information to alleviate the excesses in the testing programs under consideration.**

A copy of the notice is available on the Commission website, www.cpsc.gov, and can also be found at our website, www.tdllp.com . **We urge that the strongest consideration be given to filing comments in support of component testing, and that you urge whatever association or trade group to which you belong to do so as well.** If you require assistance in this, including review of your own tests to show the acceptability of component testing to accomplish the purposes of the legislation, please do not hesitate to contact our office.

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Note: The above comments are intended for general information only, and not as legal advice. Legal advice can only be offered after a review of a client's specific facts and circumstances, which may affect the applicability of any general comments contained herein.